

MAR 19 1976 -9 15 AM

ASSIGNMENT AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS ASSIGNMENT AGREEMENT (hereinafter called the "Assignment") is entered into on March 12, 1976, by and between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) ("Builder"), a Delaware corporation, and UNITED STATES RAILWAY ASSOCIATION ("USRA"), established pursuant to Section 201 of the Regional Rail Reorganization Act of 1973 as a non-profit government corporation organized under the District of Columbia Non-Profit Corporation Act.

WHEREAS, the Builder and DELAWARE AND HUDSON RAILWAY COMPANY ("D&H") have entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by D&H of the locomotives described in Exhibit A to the Conditional Sale Agreement (the "Locomotives"); and

WHEREAS, under the provisions of the Loan Agreement (the "Loan Agreement") to be entered into between D&H and USRA, USRA has agreed to pay Builder for the Locomotives in exchange for the assignment by Builder to USRA of the Conditional Sale Agreement, the execution and delivery to USRA by D&H of the Class B Note, which evidences the indebtedness of D&H under the Conditional Sale Agreement, and other consideration therein specified;

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

SECTION 1. Assignment by Builder. The Builder hereby assigns, transfers and sets over unto USRA, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Locomotives when and as severally delivered to and accepted by D&H, subject to payment by USRA to the Builder of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to arrange for the construction of and delivery of the Locomotives and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by D&H to the Builder under the Conditional Sale Agreement on account of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and

interest thereon, and in and to any other sums becoming due from D&H under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all of the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder for or on account of the failure of D&H to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject USRA to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to cause to be constructed and to deliver the Locomotives in accordance with the Conditional Sale Agreement or with respect to the obligations of the Builder contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve D&H from its obligations to the Builder contained or referred to in Articles 2, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the

Conditional Sale Agreement, all obligations of the Builder to D&H with respect to the Locomotives shall be and remain enforceable by D&H, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers USRA, in USRA's own name or in the name of USRA's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which USRA is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by D&H with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of USRA.

SECTION 2. Builder's Obligation to Construct.

The Builder agrees that it shall cause to be constructed the Locomotives in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to D&H in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the "Builder", as therein defined. The Builder further agrees that at the time of delivery of each unit of the Locomotives under the Conditional

Sale Agreement the Builder will warrant to USRA and D&H that the Builder has legal title to such unit and good and lawful right to sell such unit and that title to such unit is free of all claims, liens, security interests and other encumbrances of any nature except only the rights of D&H under the Conditional Sale Agreement; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of D&H thereunder.

SECTION 3. Indemnification. The Builder agrees with USRA that in any suit, proceeding or action brought by USRA under the Conditional Sale Agreement for any installment of, or interest on, the Conditional Sale Indebtedness or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless USRA from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of D&H arising out of a breach by the Builder of any obligation with respect to the Locomotives or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or

recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to D&H by the Builder. The Builder's obligation so to indemnify, protect and hold harmless USRA is conditional upon (a) USRA's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by D&H in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, USRA's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and USRA's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Builder shall defend any suit or proceeding brought against USRA so far as based on a claim that the Locomotives, or any part thereof, furnished pursuant to the Conditional Sale Agreement constitute an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Builder's expense) for the defense of same, and Builder shall pay all damages and costs awarded therein against USRA. In case the Locomotives, or any part

thereof, are in such suit held to constitute infringement and the use of the Locomotives or any part thereof is enjoined, Builder shall at its option and its own expense, either procure for USRA the right to continue using said Locomotives or parts, or replace same with non-infringing Locomotives meeting the Specifications and other requirements set forth in Article 2 of the Conditional Sale Agreement, or modify the Locomotives or parts thereof so that they become non-infringing, or remove the Locomotives and refund the Purchase Price and the transportation and delivery costs thereof, to USRA (or to D&H if all amounts due as described in the Conditional Sale Agreement shall have been paid). Builder will not assume liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by the Specifications. The foregoing states the entire liability of Builder for patent infringement by the Locomotives or any part thereof. The Builder agrees that any amounts payable to it by D&H with respect to the Locomotives, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to USRA, shall not be secured by any lien, charge or security interest upon the Locomotives or any unit thereof.

SECTION 4. Closings. Not more than ten (10) business days following presentation of a Group (as

defined in Article 3 of the Conditional Sale Agreement) of the Locomotives to an inspector of D&H for inspection at the place specified for delivery of such Group and execution and delivery to the Builder of a Certificate or Certificates of Acceptance therefor by such inspector or an authorized representative of D&H in accordance with Article 3 of the Conditional Sale Agreement, a closing ("Closing") shall be held under this Assignment Agreement with respect to such Group. At each such Closing, USRA shall pay to the Builder an amount equal to the aggregate Purchase Price (as defined in Article 4 of the Conditional Sale Agreement) of all units the Locomotives in each such Group with respect to which a Closing is being held, provided that there shall have been first delivered to USRA, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in form and substance satisfactory to USRA and to its counsel, in such number of counterparts as may be reasonably requested by said counsel:

(a) a bill of sale from the Builder to USRA transferring to USRA title to the units of the Locomotives in such Group, warranting to USRA and to D&H that at the time of delivery of such units under the Conditional Sale Agreement the Builder has

legal title to such units and good and lawful right to sell such units and that title to such units is free of all claims, liens, security interests and other encumbrances of any nature except only the rights of D&H under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Locomotives in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) an invoice of the Builder for the units of the Locomotives in such Group accompanied by or having endorsed thereon a certificate by D&H as to the correctness of the Purchase Price of each of such units;

(d) an opinion of counsel for D&H, dated as of the date of such Closing, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by

D&H and the Builder and is a legal, valid and binding instrument enforceable against D&H and the Builder in accordance with its terms,

(ii) USRA has a legal, valid, enforceable and prior security interest in the units of the Locomotives in such Group, such security interest has been validly perfected as against D&H and any party claiming through or under D&H, and no further action is required in order to continue such perfection (or stating what, if any, action is required), and

(iii) no approval of the Interstate Commerce Commission or any other governmental authority, except such approval as shall have been received, is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment by the parties thereto (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of this Assignment by parties thereto other than D&H), and stating that D&H is a duly organized and existing corporation in good standing under the laws of its jurisdiction

of incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and such opinion shall also cover such other matters as may reasonably be requested by USRA; and

(e) an opinion of counsel for the Builder, dated as of the date of such Closing, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted; (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) USRA is vested with all the rights, titles, interests, powers and privileges purported to be assigned to

it by this Assignment, and (v) at the time of delivery of the units of Locomotives in the Group to D&H under the Conditional Sale Agreement, such units were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement).

In giving the opinions specified in subparagraphs (d) and (e) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Locomotives at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder.

The obligation of USRA to make payment for any Group of the Locomotives is hereby expressly conditioned upon (i) satisfaction of all Conditions of Lending set forth

in Article V of the Loan Agreement, (ii) no Event of Default, as defined in Section 7.01 of the Loan Agreement, or any event which with the lapse of time or demand, or both, provided for in the Loan Agreement could constitute an Event of Default, as therein defined, having occurred and being continuing under the Loan Agreement, and (iii) no Event of Default, as defined in Article 16 of the Conditional Sale Agreement, or any event which with the lapse of time or demand, or both, provided for in the Conditional Sale Agreement could constitute an Event of Default, as therein defined, having occurred and being continuing under the Conditional Sale Agreement. In the event that USRA shall not make any such payment, USRA shall reassign to the Builder, without recourse to USRA, all right, title and interest of USRA in and to the units of the Locomotives with respect to which payment has not been made by USRA.

SECTION 5. Right of USRA to Assign. USRA may assign all or any of its rights under the Conditional Sale Agreement to the extent permitted thereby, including the right to receive any payments due or to become due to it from D&H thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of USRA hereunder.

SECTION 6. Representations, Warranties and Covenants of the Builder. The Builder hereby:

(a) represents and warrants to USRA, its successors and assigns, that the Conditional Sale Agreement and this Assignment were duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by D&H, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and D&H in accordance with its terms and in full force without amendment thereto, and that this Assignment is a valid and existing agreement binding upon the Builder in accordance with its terms;

(b) agrees that it will from time to time and at all times, at the request of USRA or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to

confirm the rights, titles and interests hereby assigned and transferred to USRA or intended so to be; and

(c) agrees that, upon request of USRA, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Locomotives.

SECTION 7. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed and construed in accordance with federal law where applicable and otherwise in accordance with the laws of the State of New York (but not including the choice of law rules thereof).

SECTION 8. Counterparts. This Assignment may be executed simultaneously in two or more counterparts, none of which need contain the signatures of all parties hereto and each of which shall be deemed an original, and all of which taken together shall be one and the same instrument; and it shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of all the parties hereto. USRA agrees to deliver an

executed counterpart of this Assignment to D&H, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the Builder and USRA, each pursuant to due authority, have caused this Assignment Agreement to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
ELECTRO-MOTIVE DIVISION
La Grange, Illinois

[CORPORATE SEAL]

By

Harold J. Smith

Attest:

Corporation Seal

UNITED STATES RAILWAY ASSOCIATION

[CORPORATE SEAL]

By

W. L. Dean

Attest:

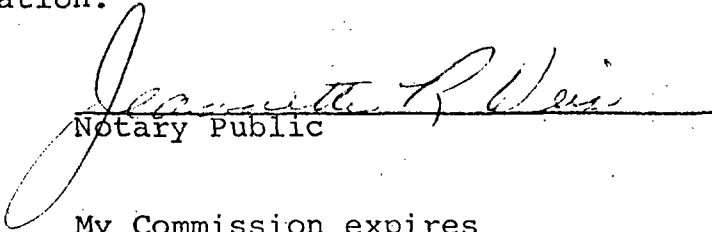
Donald H. Dean

CERTIFICATE OF ACKNOWLEDGEMENT

COUNTY OF WAYNE)
) ss:
STATE OF MICHIGAN)

On this 12th day of March, 1976, before me personally appeared HAROLD L SMITH, to me personally known, who being by me duly sworn, says that he is the Vice President of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of himself and said corporation.

[SEAL]


Notary Public

My Commission expires _____

JEANNETTE R. WEIS
Notary Public, Wayne County, Mich.
M. Commission Expires Jan. 22, 1978

CERTIFICATE OF ACKNOWLEDGEMENT

DISTRICT OF COLUMBIA, ss:

On this 15th day of March, 1976, before me personally appeared Alan L. Dean, to me personally known, who being by me duly sworn, says that he is the Vice President of UNITED STATES RAILWAY ASSOCIATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of himself and said corporation.

[SEAL]

Nancy K. Dumas
Notary Public

My Commission expires Sept. 30, 1976